

**OPINION
68-307**

October 17, 1968 (OPINION)

Mr. Richard B. Thomas
Ward County State's Attorney

RE: Schools - Special Reserve Fund - Depositories

This is in reply to your letter of October 11, 1968, in which you enclosed a letter from Mr. Amandus Esterby, Ward County Treasurer, dated October 4, 1968. Mr. Esterby's letter is concerned with the special reserve funds of school districts and reads as follows:

Can a school district demand that the county treasurer withdraw its special reserve fund from a depository already designated by the board of county commissioners to a depository of their choice and can they become their own custodian of said special reserve fund? It is my understanding that the county treasurer shall always be custodian of special reserve funds."

Section 57-19-02 of the North Dakota Century Code provides:

FUND DEPOSITED WITH COUNTY TREASURER. Such special reserve fund shall be deposited with the county treasurer of the county in which the school district, or the greater part of its territory, is situated, for the use and benefit of the school district, to be drawn upon as provided in this chapter, and kept by such county treasurer as a separate trust fund. Moneys in such fund may be deposited, held, or invested in the same manner as the sinking fund of the district or in the purchase of shares or securities of federal savings and loan associations or state chartered building and loan associations, within the limits of federal insurance."

The above quoted provision would appear to clearly indicate that the moneys in the special reserve fund of a school district are to be deposited with the county treasurer and kept by him in a separate trust fund.

The Legislature has amended the provisions relative to sinking funds to permit a school district, upon passage of a resolution by the school board, to choose their treasurer to be custodian of the sinking fund. See section 21-03-40 of the North Dakota Century Code, as amended. Since the school building fund is to be held in the same manner as sinking funds, this provision would also be applicable to the school building fund. See section 57-15-17 (1) of the North Dakota Century Code, as amended. These provisions are not applicable to the question of the custody of the special reserve funds of school districts. Therefore we do not believe a school district may become the custodian of its own special reserve fund, nor do we believe any of the officers of the school district may assume such function.

With regard to the investment of the special reserve fund, section 57-19-02, quoted above, provides in part that the fund is to

be deposited, held or invested in the same manner as the sinking fund of the district. Section 21-03-43 of the North Dakota Century Code prescribes the procedures for the investment of the sinking funds. The statute specifies it may be loaned or invested "under the direction of the proper governing body" as permitted by statute. One of the permitted investments is a deposit in accordance with chapter 21-04 of the North Dakota Century Code which is the chapter governing depositories of public funds. We assume the term "proper governing body" as used in this statute would mean a school board if the sinking fund was for a bond issue of a school district. Therefore, if the depository is chosen by the school district in accordance with the requirements of chapter 21-04, we believe the school board may specify the depository in which the county treasurer is to deposit the special reserve fund. Such fund must, however, be under the control of the county treasurer and kept by him as a trust fund.

HELGI JOHANNESON

Attorney General